

3984

2013-2014 Regular Sessions

I N   S E N A T E

March 4, 2013

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Introduced by Sens. LANZA, GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the waterfront commission act, in relation to empowering the waterfront commission to accept applications in the longshoremen's register

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Section 5-p of chapter 882 of the laws of 1953, constitut-  
2     ing the waterfront commission act, as amended by chapter 431 of the laws  
3     of 1999, is amended to read as follows:  
4     S 5-p. [Suspension or acceptance of applications for inclusion in  
5     longshoremen's] LONGSHOREMEN'S register[; exceptions]. [1.] The commis-  
6     sion shall [suspend the acceptance of] ACCEPT applications for inclusion  
7     in the longshoremen's register [for a period of sixty days after the  
8     effective date of this act. Upon the termination of such sixty day peri-  
9     od the commission shall thereafter have the power to make determinations  
10    to suspend the acceptance of application for inclusion in the  
11    longshoremen's register for such periods of time as the commission may  
12    from time to time establish and, after any such period of suspension,  
13    the commission shall have the power to make determinations to accept  
14    applications for such period of time as the commission may establish or  
15    in such number as the commission may determine, or both. Such determi-  
16    nations to suspend or accept applications shall be made by the commis-  
17    sion]: (a) [on its own initiative or (b)] upon the joint recommendation  
18    in writing of stevedores and other employers of longshoremen in the port  
19    of New York district, acting through their representative for the  
20    [purpose] PURPOSES of collective bargaining with a labor organization  
21    representing such longshoremen in such district, and such labor organ-  
22    ization; or [(c)] (B) upon the petition in writing of a stevedore or  
23    [another] OTHER employer of longshoremen in the port of New York  
24    district which does not have a representative for the [purpose] PURPOSES  
25    of collective bargaining with a labor organization representing such

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 longshoremen. [The commission shall have the power to accept or reject  
2 such joint recommendation or petition.

3 All joint recommendations or petitions filed for the acceptance of  
4 applications with the commission for inclusion in the longshoremen's  
5 register shall include:

6 (a) the number of employees requested;

7 (b) the category or categories of employees requested;

8 (c) a detailed statement setting forth the reasons for said joint  
9 recommendation or petition;

10 (d) in cases where a joint recommendation is made under this section,  
11 the collective bargaining representative of stevedores and other employ-  
12 ers of longshoremen in the port of New York district and the labor  
13 organization representing such longshoremen shall provide the allocation  
14 of the number of persons to be sponsored by each employer of longshore-  
15 men in the port of New York district; and

16 (e) any other information requested by the commission.

17 2. In administering the provisions of this section, the commission  
18 shall observe the following standards:

19 (a) To encourage as far as practicable the regularization of the  
20 employment of longshoremen;

21 (b) To bring the number of eligible longshoremen into balance with the  
22 demand for longshoremen's services within the port of New York district  
23 without reducing the number of eligible longshoremen below that neces-  
24 sary to meet the requirements of longshoremen in the port of New York  
25 district;

26 (c) To encourage the mobility and full utilization of the existing  
27 work force of longshoremen;

28 (d) To protect the job security of the existing work force of long-  
29 shoremen by considering the wages and employment benefits of prospective  
30 registrants;

31 (e) To eliminate oppressive and evil hiring practices injurious to  
32 waterfront labor and waterborne commerce in the port of New York  
33 district, including, but not limited to, those oppressive and evil  
34 hiring practices that may result from either a surplus or shortage of  
35 waterfront labor;

36 (f) To consider the effect of technological change and automation and  
37 such other economic data and facts as are relevant to a proper determi-  
38 nation;

39 (g) To protect the public interest of the port of New York district.

40 In observing the foregoing standards and before determining to suspend  
41 or accept applications for inclusion in the longshoremen's register,  
42 the commission shall consult with and consider the views of, including  
43 any statistical data or other factual information concerning the size of  
44 the longshoremen's register submitted by, carriers of freight by water,  
45 stevedores, waterfront terminal owners and operators, any labor organ-  
46 ization representing employees registered by the commission, and any  
47 other person whose interests may be affected by the size of the  
48 longshoremen's register.

49 Any joint recommendation or petition granted hereunder shall be  
50 subject to such terms and conditions as the commission may prescribe.

51 3. Any determination by the commission pursuant to this section to  
52 suspend or accept applications for inclusion in the longshoremen's  
53 register shall be made upon a record, shall not become effective until  
54 five days after notice thereof to the collective bargaining represen-  
55 tative of stevedores and other employers of longshoremen in the port of  
56 New York district and to the labor organization representing such long-

1 shoremen and/or the petitioning stevedore or other employer of long-  
2 shoremen in the port of New York district and shall be subject to judi-  
3 cial review for being arbitrary, capricious, and an abuse of discretion  
4 in a proceeding jointly instituted by such representative and such labor  
5 organization and/or by the petitioning stevedore or other employer of  
6 longshoremen in the port of New York district. Such judicial review  
7 proceeding may be instituted in either state in the manner provided by  
8 the law of such state for review of the final decision or action of  
9 administrative agencies of such state, provided, however, that such  
10 proceeding shall be decided directly by the appellate division as the  
11 court of first instance (to which the proceeding shall be transferred by  
12 order of transfer by the supreme court in the state of New York or in  
13 the state of New Jersey by notice of appeal from the commission's  
14 determination) and provided further that notwithstanding any other  
15 provision of law in either state no court shall have power to stay the  
16 commission's determination prior to final judicial decision for more  
17 than fifteen days. In the event that the court enters a final order  
18 setting aside the determination by the commission to accept applications  
19 for inclusion in the longshoremen's register, the registration of any  
20 longshoremen included in the longshoremen's register as a result of such  
21 determination by the commission shall be cancelled.

22 This section shall apply, notwithstanding any other provision of this  
23 act, provided however, such section shall not in any way limit or  
24 restrict the provisions of section five of article nine of this act  
25 empowering the commission to register longshoremen on a temporary basis  
26 to meet special or emergency needs or the provisions of section four of  
27 article nine of this act relating to the immediate reinstatement of  
28 persons removed from the longshoremen's register pursuant to article  
29 nine of this act. Nothing in this section shall be construed to modify,  
30 limit or restrict in any way any of the rights protected by article  
31 fifteen of this act.

32 4. Upon the granting of any joint recommendation or petition under  
33 this section for the acceptance of applications for inclusion in the  
34 longshoremen's register, the commission shall accept applications upon  
35 written sponsorship from the prospective employer of longshoremen. The  
36 sponsoring employer] STEVEDORES AND OTHER EMPLOYERS OF LONGSHOREMEN IN  
37 THE PORT OF NEW YORK DISTRICT shall furnish the commission with the  
38 [name, address and such other identifying or category information as the  
39 commission may prescribe for any person so sponsored. The sponsoring  
40 employer] NAMES AND ADDRESSES OF THE PERSONS SELECTED FOR INCLUSION IN  
41 THE LONGSHOREMEN'S REGISTER AND shall certify that the selection of  
42 [the] THESE persons [so sponsored] was made in a fair and non-discrimi-  
43 natory basis in accordance with the requirements of the laws of the  
44 United States and the states of New York and New Jersey dealing with  
45 equal employment opportunities.

46 [Notwithstanding any of the foregoing, where the commission determines  
47 to accept applications for inclusion in the longshoremen's register on  
48 its own initiative, such acceptance shall be accomplished in such manner  
49 deemed appropriate by the commission.

50 5. Notwithstanding any other provision of this act, the commission may  
51 include in the longshoremen's register under such terms and conditions  
52 as the commission may prescribe:

53 (a) a person issued registration on a temporary basis to meet special  
54 or emergency needs who is still so registered by the commission;

55 (b) a person defined as a longshoreman in subdivision six of section  
56 five-a of this act who is employed by a stevedore defined in paragraph

(b) or (c) of subdivision one of said section five-a and whose employment is not subject to the guaranteed annual income provisions of any collective bargaining agreement relating to longshoremen;

(c) no more than twenty persons issued registration limited to acting as scalemen pursuant to the provisions of chapter 953 of the laws of 1969 and chapter 64 of the laws of 1982 who are still so registered by the commission and who are no longer employed as scalemen on the effective date of this subdivision;

(d) a person issued registration on a temporary basis as a checker to meet special or emergency needs who applied for such registration prior to January 15, 1986 and who is still so registered by the commission;

(e) a person issued registration on a temporary basis as a checker to meet special or emergency needs in accordance with a waterfront commission resolution of September 4, 1996 and who is still so registered by the commission;

(f) a person issued registration on a temporary basis as a container equipment operator to meet special or emergency needs in accordance with a waterfront commission resolution of September 4, 1996 and who is still so registered by the commission; and

(g) a person issued registration on a temporary basis as a longshoreman to meet special or emergency needs in accordance with a waterfront commission resolution of September 4, 1996 and who is still so registered by the commission.

6. The commission may include in the longshoremen's register, under such terms and conditions as the commission may prescribe, persons issued registration on a temporary basis as a longshoreman or a checker to meet special or emergency needs and who are still so registered by the commission upon the enactment of this amendment.]

S 2. If any part or provision of this act or the application thereof to any person or circumstances be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this act or the application thereof to other persons or circumstances and the two states hereby declare that they would have entered into this act or the remainder thereof had the invalidity of such provisions or application thereof been apparent.

S 3. This act constitutes an agreement between the states of New York and New Jersey, supplementary to the waterfront commission compact and amendatory thereof, and shall be liberally construed to effectuate the purposes of that compact and the powers vested in the waterfront commission hereby shall be construed to be in aid of and supplemental to and not in limitation of or in derogation of any of the powers heretofore conferred upon or delegated to the waterfront commission.

S 4. This act shall take effect upon the enactment into law by the state of New Jersey of legislation having an identical effect with this act, but if the state of New Jersey shall have already enacted such legislation, then it shall take effect immediately; and provided that the waterfront commission shall notify the legislative bill drafting commission upon the occurrence of the enactment of the legislation provided for in section one of this act in order that the commission may maintain an accurate and timely effective data base of the official text of laws of the state of New York in furtherance of effecting the provisions of section 44 of the legislative law and section 70-b of the public officers law.